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Nos. 912 and 913

In the Supreme Court of the United States

OCTOBER TERM, 1959

JOSEPH MANFREDI, PETITIONER

v.

UNITED STATES OF AMERICA

PASQUALE DE LUCA, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITIONS FOR WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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OPINION BELOW

The opinion of the court of appeals (No. 912, Pet. App. 27; No. 913, Pet. App. 11) is reported at 275 F. 2d 588.

JURISDICTION

The judgment of the court of appeals was entered on March 8, 1960. On April 6, 1960, Mr. Justice Harlan extended the time for filing the petitions for writs of

certiorari to and including May 6, 1960, and the petitions were filed on that date. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether the evidence was sufficient to support petitioners' convictions.

STATEMENT

After a jury trial in the United States District Court for the Southern District of New York, petitioner Manfredi was found guilty of conspiracy, and petitioner De Luca was found guilty of the substantive offense, of violating 21 U.S.C. 173 and 174 of the narcotics Laws (App.[1] 16-18, 227).[2] Petitioners Manfredi and De Luca were sentenced to imprisonment for seven and five years, respectively (App. 277-280). On appeal, the convictions were affirmed.

The government's evidence was developed through the testimony of seven federal narcotic agents, two of whom had posed as buyers of heroin during the spring and summer months of 1957. The remaining five agents had kept the transactions, sales, and contacts of their fellow agents under surveillance during this period.

1. *The evidence as to petitioner Manfredi.*

The testimony showed, *inter alia,* that agent Giorgio purchased heroin from De Serra, a co-defendant who

[1] "App." refers to petitioners' appendix in the court of appeals.

[2] Petitioner De Luca, originally named in the conspiracy count (App. 16), successfully moved for dismissal as to that count at the close of the government's evidence (App. 175). Three other men, Euphemia, De Serra, and Correggio, who were also named in the various counts of the thirteen-count indictment (App. 8-18), entered pleas of guilty prior to trial.

had pleaded guilty prior to trial, on five separate occasions on March 4, 14, 21, 28, and April 11, 1957 (two purchases for $375; three for $750) (App. 37, 38-40, 40-42, 43-44, 46). On each of the March dates, shortly after the consummation of each sale, De Serra met and conversed with petitioner Manfredi in, or in the vicinity of, the latter's luncheonette (App. 48-51, 52-53, 54, 73-74, 75). On two of these occasions De Serra was seen to pass money to Manfredi; on another, Manfredi was seen counting money as he talked with De Serra (App. 53, 54, 75).[3]

During this same period agent Mangiaracina was buying heroin from Euphemia, who was likewise a co-defendant (App. 81-105). Shortly after a sale on March 28, 1957, amounting to $315 (App. 83, 117), Euphemia met petitioner Manfredi on a street, conversed with him, and passed money to him (App. 118-119). Following meetings which Mangiaracina had with Euphemia on at least four other occasions (May 14, June 5, 11, 26, 1957), Euphemia was seen entering the Manfredi luncheonette or conversing with Manfredi (App. 56, 122-125). During these many contacts which Mangiaracina had with Euphemia, the latter boasted that he could supply any amount of narcotics and spoke of his connection, "Jo Jo," as the "biggest" (App. 88-102). Manfredi was known as "Jo Jo" (App. 118) and was named by Euphemia as "the guy you [agent Mangiaracina] have been doing business with" (App. 100).

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[3] After arrest, petitioner Manfredi denied knowing De Serra (App. 76).

2. The evidence as to petitioner De Luca.

Agent Mangiaracina met Euphemia on the evening of July 31, 1957, and asked if Euphemia could deliver a quarter kilo of heroin. The two men walked to a phone booth where Euphemia dialed the number of a tavern where petitioner De Luca worked as a bartender. Euphemia told someone whom he addressed as "Scarpa"[4] to give him a half an hour to get there. Euphemia and Mangiaracina rode the subway to the tavern. Euphemia entered the tavern, emerged a few minutes later, and told Mangiaracina that the "package" was in the glove compartment of an Oldsmobile parked nearby. Euphemia unlocked the car and the two men got in. Mangiaracina removed a package of heroin from the glove compartment and gave Euphemia $2,500 (App. 103-105). Just prior to the time the two men entered the car, De Luca was seen in front of the tavern peering after them (App. 112). The license number of the car was listed in De Luca's name and he was seen driving it on numerous occasions (App. 113). De Luca was known as "Scarpa" or "Scop" (App. 129).

ARGUMENT

The only issue raised here by petitioners is the sufficiency of the evidence to support their conviction.[5]

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[4] The record reads "Starpa," but this was described by the court of appeals (and not refuted by petitioners) as "evidently a stenographic error."

[5] Petitioner De Luca suggests (No. 913, Pet. 8) that he has been aggrieved by the court's refusal, prior to trial, to grant a severance (App. 253-254, 268-269). The record is clear that the court did not abuse its discretion in so ruling. In view of its precautions, intensified after the dismissal of the conspiracy count, to separate the

Their contentions in this regard were explored at length and rejected, after careful consideration, in motions before the trial court (App. 148-162, 172-173, 183, 228, 230-231) and on appeal below (No. 912, Pet. 29-34, 41-43). There is no occasion for a further review by this Court.

The existence of a conspiracy to traffic in narcotics was established by a wealth of direct proof of numerous sales of heroin in substantial amounts. And the testimony was undisputed that the "runners" involved in these sales repeatedly (on at least nine occasions) sought out petitioner Manfredi or entered his restaurant after making a delivery of heroin, at times turning over money to him. This fact alone, not to mention petitioner's furtive conduct, justified the court below in concluding that the evidence was "more than sufficient" to warrant a finding that Manfredi knowingly participated in the conspiracy and opened the way for the admission against him of other testimony as to acts and declarations of co-conspirators.[5]

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charges and the evidence as to each defendant (App. 173-174, 186, 189, 204, 205, 209, 211, 217, 219) no error could have resulted because of the joint trial. See *Schaffer* v. *United States*, No. 111, this Term, decided May 16, 1960.

[5] The court below properly distinguished (as well as disapproved) *Panci* v. *United States*, 256 F. 2d 308 (C.A. 5), cited by petitioner Manfredi (No. 912, Pet. 18-19, 23-24) as being in conflict. In that case there was substantially less proof of the existence of a conspiracy or the defendant's connection with the conspiracy that would have permitted the admissibility against him of hearsay statements made by others charged as co-conspirators. For example, there was no showing, unlike in the present case, that the defendant consistently met a member of the conspiracy shortly after the narcotics transactions and that frequently money was passed between them at these meetings.

As to petitioner De Luca, there was direct proof that a quarter kilo of heroin was in the glove compartment of his locked automobile parked within his sight. At trial De Luca did not choose to explain this possession. There was testimony that this heroin was delivered in the car to a purported buyer by a "runner" who unlocked the car after he had contacted De Luca. As the court below held, this was sufficient evidence to take the substantive count to the jury.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petitions for writs of certiorari should be denied.

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JUNE, 1960.

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